IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5384 OF 2006

Shrinivas Bhagwantram Guyal .... Petitioner

versus

The Divisional Joint Registrar,
Co-operative Societies, Pune Dn.
Pune and ors. ..... Respondent.

Mr. P.K. Dhakephalkar Sr. adv. i/b.Niranjan P.Shimpi for the petitioner.
Mr. R.M.Patne AGP for respondent no.1
Mr. A.S.Kulkarni for respondent nos. 2 and 4.
Mr. Shail Sakhare for respondent no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 07TH SEPTEMBER, 2007

P.C.;

1. By an interlocutory order dated 26-0-2006 passed by this court the petitioner was directed to deposit a sum of Rs. 5 lacs. In compliance of the said order the petitioner did deposit the amount. This court had expected the parties to negotiate for a settlement pending this petition. In response to the same, the respondent bank had shown its willingness to accept whatever amount has been paid till date, as complete payment towards full and final settlement. But the petitioner is not agreeable for the same. It is the case of the petitioner that the respondent bank has charged exorbitant interest. According to the

petitioner, the petitioner was made to pay an amount of Rs.1,24,461/- in excess of the claim covered by the certificate issued under section 101 of the Co-operative Societies Act.

2. The learned counsel for the respondent then submits that as the petitioner is not ready and willing to settle the claim, the respondent would be justified in demanding the actual amount from the petitioner which according to the respondent is in the sum of Rs.1,75,000/-, which is allegedly due and recoverable by the respondent. This issue cannot be gone into in writ petition as the dispute pertains to actual calculation of the amount of interest and the exercise to find out as to whether the amount in the recovery certificate is fully paid or otherwise.

3. The Senior advocate appearing for the petitioner submits that a Chartered Accountant should be appointed as a Commissioner to carry out the calculation and on the basis of the same, appropriate orders can be passed. I do not propose to go into the same in the writ petition. However for this limited purpose, I deem it appropriate to remand the matter to the Divisional Joint Registrar. Hence the following order.

4. The parties to approach the Divisional Joint Registrar. The petitioner shall make an application for appointment of a Chartered Accountant as a Commissioner to find out as to whether the petitioner has paid the entire amount due and payable to the respondent bank. The Dvl.Joint Registrar shall appoint a Chartered Accountant to act as a Commissioner at the cost of the petitioner and after receiving the report pass appropriate order. Writ Petition thus stands disposed of.

5. I permit the bank to withdraw the entire amount deposited in this court. However it is made clear that the said withdrawal would be subject to the ultimate decision to be rendered by the Dvl.Joint Registrar after the remand. Pending the decision of the question of determination of the amount, the respondent shall not proceed against any of the property of the petitioner in execution of 101 certificate. The Dvl. Joint Registrar shall complete the exercise as expeditiously as possible and preferably within three months from today.

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